

MT LEGISLATIVE HISTORY

Chapter 496 1975

Bill H 637 S _____

Original bill & hist. ✓ C

H. Committee on Judiciary

S. Committee on St. Administration
no hearing

Hearing Date(s) 2/17 _____ C

Hearing Date(s) no hearing C-re-referred

2/21 _____ C

w b. Judicizing 3/13 _____ C

_____ C

3/14 _____ C

_____ C

BEST COPY
AVAILABLE

_____ C

Date Out _____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

VINCENT

BILL NO. 637

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY

Public and Private Supervising Agencies, and Placing
Responsibility for the Program with the Department of
Institutions by Amending Sections 82-4202, 95-2217 Through

95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M.
1947." *Ruins Luchek O'Connell TEALVE*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 95-2217, R.C.M. 1947, is amended to read as follows:

"95-2217. Prisoner furlough program -- purpose and intent. The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison; to increase their responsibility to society; to make it possible that they may, while serving their sentences, work gainfully to support their dependents in whole or in part; and providing for a the minimum hourly wage required by law ~~of--one--and 49/100--(\$1.49)--dollars-an-hour~~ to be paid to said convicts while so employed; continue their education or training; and at the same time fulfill the obligations of the sentence of

imprisonment imposed; placing the establishment, regulation, guidance, and control of such program under the direction of the ~~warden-of-the-state-prison~~ department of institutions with the advice and consent of the ~~state-board-of-pardons~~ furlough committee created in section 4 of this act which program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes. This act is to be liberally construed to effect the over-all objectives set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to read as follows:

"95-2218. Definitions. Unless the context requires otherwise, in this act:

(1) "Board Department" means the state--board--of pardons department of institutions provided for in section 82A-804 82A-801;

(2) "State prison" means the Montana state prison at Deer Lodge and any adult correctional facility under the direction of the department;

(3) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison;

(4) "Sheriff Supervising agency" means any county sheriff--including--all--deputies--or--other--persons--working

HB 137

1 ~~under his direction or guidance~~ federal, state, county,
2 ~~local or private agency, Indian tribe and reservation, or~~
3 ~~any person, group, association or organization approved by~~
4 ~~the department to undertake the supervision of prisoners~~
5 ~~participating in the furlough program;~~

6 (5) "Jail" means any county jail;

7 (6) "Warden Furlough committee" means the
8 ~~superintendent of the state prison appointed by the board of~~
9 ~~institutions, committee established in section 4 of this~~
10 ~~act;~~

11 (7) "Applicant" means any prisoner who has signed an
12 application to participate in the prisoner furlough
13 program."

14 Section 3. Section 95-2219, R.C.M. 1947, is amended to
15 read as follows:

16 "95-2219. ~~Warden Department~~ to establish program and
17 ~~rules -- privileges granted prisoners.~~ The ~~warden department~~
18 is authorized and directed to establish a furlough program
19 and rules to implement and control the same, in accordance
20 with the provisions of Title 82, chapter 42, R.C.M. 1947. A
21 ~~prisoner -- sentenced -- to -- the state prison -- may be granted the~~
22 ~~privilege of~~ Rules shall include provisions for:

23 (1) Working at paid employment for a rate of pay not
24 less than ~~one -- and -- 40/100 -- (\$1.40) -- dollars an hour, or the~~
25 minimum hourly wage as required by law;

1 (2) Participating in an educational or training
2 program;

3 (3) Approval of supervising agency; and

4 (4) Review of determinations in furlough application."

5 Section 4. There is a new R.C.M. section numbered
6 95-2219.1 that reads as follows:

7 95-2219.1. Creation of furlough committee --
8 composition. There is created a prisoner furlough committee
9 at the state prison. It shall be composed of the following
10 staff members of the prison:

11 (1) The warden or his designated representative;

12 (2) Employment counselor;

13 (3) Applicant's social case worker;

14 (4) Psychologist (or psychiatrist);

15 (5) Member chosen by the applicant.

16 Each member shall have an equal vote in all
17 proceedings. The furlough committee shall meet on a regular
18 monthly schedule which shall be adopted, printed and
19 circulated throughout the prison. Each inmate of the prison
20 shall be notified of any variation in the schedule at least
21 one week in advance of the rescheduled meeting.

22 Section 5. Section 95-2220, R.C.M. 1947, is amended to
23 read as follows:

24 "95-2220. Application for participation in furlough
25 program. Any prisoner confined in the state prison may make

1 application to participate in the furlough program ~~according~~
 2 ~~to rules adopted by the warden with the advice--and--consent~~
 3 ~~of--the-board~~ after having served at least one-half (1/2) of
 4 the time required to be considered for parole."

5 Section 6. Section 95-2221, R.C.M. 1947, is amended to
 6 read as follows:

7 "95-2221. Consideration of application -- furlough
 8 ~~plan-----consent--of-sheriff-necessary~~ duties of committee.

9 (1) At the monthly meeting of the furlough committee
 10 following the signing of any prisoner's application, ~~The~~
 11 ~~board~~ the committee shall approve or deny the application of
 12 the each prisoner after careful study of ~~the--prisoner's~~
 13 ~~conduct,--attitude--and--behavior-in-the-prison-in-which-the~~
 14 ~~prisoner--is--confined~~ his furlough plans, his criminal
 15 history, and all other pertinent case material. The
 16 following rules shall be observed when the committee meets
 17 to consider any application:

18 (a) every applicant shall be allowed to call two (2)
 19 witnesses from outside the institution to testify as to his
 20 general attitude, participation in self-help activities, or
 21 his character or job references;

22 (b) every applicant shall be allowed one summary
 23 dismissal of any committee member for reason of personality
 24 conflict, in which event an appropriate and mutually
 25 agreeable substitute shall be made;

1 (c) every applicant shall remain present during the
 2 discussion of his application by the committee and be given
 3 an oral decision on his application before the adjournment
 4 of the committee. Nothing contained herein shall be
 5 construed to allow an executive session of the committee to
 6 be held in the absence of the applicant;

7 (d) every applicant shall be viewed singly, and shall
 8 be recognized as an individual, with individual problems,
 9 and individual capabilities; the decision of the committee
 10 shall take into account the potential of the individual and
 11 shall determine the course which is most likely to provide
 12 optimum benefit to both society and the individual;

13 (e) each applicant shall be allowed to discuss any
 14 specific problem areas with any member of the furlough
 15 committee;

16 (f) a secretary shall be in attendance at each meeting
 17 to record the entire proceedings, including the
 18 determination of the committee, and the record shall be sent
 19 to each person participating in the meeting within ten (10)
 20 days following the meeting and the original copy shall be
 21 filed with the department.

22 (2) If the application is approved, the warden
 23 department shall, ~~adopt--a--furlough-plan-for-the-prisoner~~
 24 within the shortest possible period of time, locate an
 25 agency capable of supervising the prisoner applicant. The

48637

supervising agency, the department, and the prisoner applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a notary public, in triplicate, with one copy each to be filed with the committee and the department and one copy to be retained by the applicant. Upon the signing of the agreement, the prisoner will be released to the supervising agency, which shall constitute an extension of the limits of confinement.

(3) ~~No prisoner shall be released without the written consent of the sheriff of the county receiving the prisoner~~ If the application is denied the prisoner may reapply after six (6) months time. After an applicant has been denied three (3) times he may appeal to the department for a hearing by the board of pardons."

Section 7. Section 95-2222, R.C.M. 1947, is amended to read as follows:

"95-2222. Disposition of prisoner's earnings -- trust fund -- schooling costs. (1) A prisoner employed in the community under a work furlough plan shall ~~surrender to the sheriff his total earnings less payroll deductions -- required by -- law -- The sheriff shall deduct from such earnings in the following order of priority~~ enter into a written financial

agreement with the supervising agency and the department concerning the acquisition and disposition of his earnings. This financial agreement shall provide for the payment of:

(a) A standard charge for ~~all prisoners determined by the county commissioners to be the cost -- to -- the -- county -- of~~ providing food, lodging and clothing for ~~such~~ the prisoner if incurred and if applicable;

(b) The actual and necessary travel and other expenses of ~~such~~ the prisoner under furlough from actual confinement under the program; and

(c) ~~Such~~ An amount ~~as the prisoner may be determined by the district judge~~ to pay for the support of his dependents, which amount shall be paid to ~~such~~ the dependents; and

(d) ~~A minimal~~ An allowance for personal items, and other expenses or disbursements agreed upon by the prisoner and the supervising agency.

(2) Unless the financial agreement specifically provides for other disbursement of the money, Any any balance remaining after ~~such~~ deductions and payments shall be deposited to an interest-bearing account held in trust for ~~said~~ the prisoner and shall be paid to him upon release.

(3) If no other sources of support are available, The above the costs of a prisoner under furlough who is in training or school shall be the responsibility of the

1 state."

2 Section 8. Section 95-2223, R.C.M. 1947, is amended to
3 read as follows:

4 "95-2223. Administrative rules -- co-operation by
5 state agencies. (1) The warden department is authorized to
6 make rules for the administration of the provision of this
7 ~~act with the advice and consent of the board~~ in accordance
8 with Title 82, chapter 42, R.C.M. 1947.

9 (2) All state, county and local agencies shall
10 co-operate ~~with the warden and sheriff~~ in the administration
11 of the furlough program."

12 Section 9. Section 95-2224, R.C.M. 1947, is amended to
13 read as follows:

14 "95-2224. Prisoner not agent, ~~employee~~ or involuntary
15 servant ~~of warden or sheriff~~. No prisoner ~~employed~~ in the
16 community under the provisions of this act shall be deemed
17 to be an agent, ~~employee~~, or involuntary servant of the
18 ~~warden or sheriff department or of the supervising agency~~
19 while released from confinement pursuant to the terms of the
20 furlough program. Abuse of this section shall be deemed
21 official misconduct pursuant to 94-7-401, R.C.M. 1947."

22 Section 10. There is a new R.C.M. section numbered
23 95-2226.1 that reads as follows:

24 95-2226.1. Responsibility of department and
25 supervising agency -- revocation of furlough -- escape. (1)

1 The department shall be responsible for the activities of a
2 prisoner participating in a furlough program under this act.
3 The supervising agency shall be responsible for those
4 activities of a furloughed prisoner for which it is
5 responsible in the written furlough agreement.

6 (2) If any prisoner released from actual prison
7 confinement under the furlough program fails to comply with
8 the rules and regulations of the furlough agreement, he
9 shall be called by the department or by the supervising
10 agency to appear before the department or supervising
11 agency. If a conference is not sufficient to resolve the
12 situation and if the prisoner continues in his
13 noncompliance, the department shall file an affidavit in the
14 district court of the county in which the violation took
15 place charging the prisoner with a violation of the rules
16 and regulations of the furlough agreement. The district
17 court shall hold a hearing on the charge at which the
18 prisoner is entitled to have counsel appointed to represent
19 him. Upon determining that the prisoner has violated the
20 rules and regulations of the furlough agreement, the court
21 shall order the prisoner returned to prison.

22 (3) If the department determines that a prisoner
23 presents an immediate grave threat to the community in which
24 he is furloughed, it may order the prisoner returned to
25 prison before a hearing is held, but in this case a hearing

HB 637

1 on the charges against the prisoner, as provided for in the
2 above subsection, must be held in the district court no
3 later than ten (10) days after the return of the prisoner to
4 the state prison.

5 (4) If a prisoner, while not disabled from working by
6 temporary illness, is unemployed for a period of thirty (30)
7 days, or more, after his availability for employment is
8 reported in writing by the supervising agency to the
9 department of labor and industry office serving the area in
10 which the prisoner is furloughed and to the union to which
11 the prisoner belongs, or if a prisoner has become so
12 disabled as to be unemployable, or if a prisoner is on an
13 educational furlough and has demonstrated for a period of
14 six (6) weeks or more that he is unable to benefit from
15 schooling or training, then the prisoner, the department, or
16 the supervising agency may request that a conference be held
17 with the department, the prisoner, and a representative of
18 the supervising agency to consider the problem of the
19 prisoner's unemployment, disability, or inability to benefit
20 from schooling or training. At this conference the prisoner
21 may request that his supervision be transferred to another
22 supervising agency, and a representative of the new agency
23 may be at the conference. If the conference does not result
24 in a resolution of the problem of the prisoner's
25 unemployment, disability, or inability to benefit, the

1 department may file an affidavit in the district court of
2 the county in which the prisoner is furloughed, stating that
3 the prisoner is not benefiting from the furlough program and
4 will not benefit from continued participation in the program
5 and requesting a hearing to determine an alternate proposal.
6 In this hearing the prisoner is entitled to have counsel
7 appointed to represent him. Upon determining that the
8 prisoner is not benefiting from the furlough program and
9 will not benefit from continued participation in the
10 program, the court shall order the prisoner returned to the
11 prison.

12 (5) For the purpose of this act, the provisions
13 relating to escape in section 94-7-306, R.C.M. 1947, shall
14 apply, unless aggravating circumstances require a more
15 severe penalty.

16 Section 11. Section 82-4202, R.C.M. 1947, is amended
17 to read as follows:

18 "82-4202. Definitions. For purposes of this act:

19 (1) "Agency" means any board, bureau, commission,
20 department, authority or officer of the state government
21 authorized by law to make rules and to determine contested
22 cases, except that the provisions of this act shall not
23 apply to the following:

24 (a) the legislature and any branch, committee or
25 officer thereof;

1 (b) the judicial branches and any committee or officer
2 thereof;

3 (c) the governor, except that an agency otherwise
4 covered by this act shall not be exempt because the governor
5 has been designated as a member thereof;

6 (d) the state military establishment and agencies
7 concerned with civil defense and recovery from hostile
8 attack;

9 (e) the state board of pardons, except that said board
10 shall be subject to the requirements of section 3 [82-4203]
11 and 5 [82-4205] of this act and its rules shall be published
12 in the Montana administrative code and register;

13 (f) the supervision and administration of any penal,
14 mental, medical or eleemosynary institution with regard to
15 the admission, release, institutional supervision, custody,
16 control, care or treatment of inmates, prisoners or
17 patients, except as provided in sections 95-2219 and
18 95-2223, R.C.M. 1947;

19 (g) the administration and management of educational
20 institutions;

21 (h) the financing, construction and maintenance of
22 public works.

23 (2) "Rule" means each agency regulation, standard or
24 statement of general applicability that implements,
25 interprets, or prescribes law or policy or describes the

1 organization, procedures, or practice requirements of an
2 agency. The term includes the amendment or repeal of a prior
3 rule, but does not include:

4 (a) statements concerning only the internal management
5 of an agency and not affecting private rights or procedures
6 available to the public;

7 (b) declaratory rulings issued pursuant to section 18
8 [82-4218] of this act;

9 (c) intra-agency memoranda;

10 (d) rules relating to the use of public works,
11 facilities, streets and highways, when the substance of such
12 rules is indicated to the public by means of signs or
13 signals;

14 (e) seasonal rules adopted annually relating to
15 hunting, fishing and trapping when there is a statutory
16 requirement for the publication of such rules, and rules
17 adopted annually relating to the seasonal recreational use
18 of lands and waters owned or controlled by the state when
19 the substance of such rules is indicated to the public by
20 means of signs or signals;

21 (f) rules relating to personnel standards, job
22 classifications or salary ranges for agency employees;

23 (g) uniform rules adopted pursuant to interstate
24 compact, except that such rules shall be filed in accordance
25 with section 10 [82-4210] of this act and shall be published

HB 637

1 in the Montana administrative code and register.

2 (3) "Contested case" means any proceeding before an
3 agency in which a determination of legal rights, duties or
4 privileges of a party is required by law to be made after an
5 opportunity for hearing. The term includes, but is not
6 restricted to, rate making, price fixing and licensing.

7 (4) "License" includes the whole or part of any agency
8 permit, certificate, approval, registration, charter or
9 other form of permission required by law, but does not
10 include a license required solely for revenue purposes.

11 (5) "Licensing" includes any agency process respecting
12 the grant, denial, renewal, revocation, suspension,
13 annulment, withdrawal, limitation or amendment of a license.

14 (6) "Party" means any person or agency named or
15 admitted as a party, or properly seeking and entitled as of
16 right to be admitted as a party; but nothing herein shall be
17 construed to prevent an agency from admitting any person or
18 agency as a party for limited purposes.

19 (7) "Person" means any individual, partnership,
20 corporation, association, governmental subdivision or public
21 organization of any character other than an agency."

22 Section 12. Section 95-2226, R.C.M. 1947, is repealed.

-End-

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 437	An act ordering a referendum to reduce to one & 1/4% the allowable monthly interest charge on retail charge accounts.	2/6/75	Vincent	2/17/75	DO NOT PASS	2/19/75
HB 620	Providing for voter registration on & in the 30 day period before an election day; allowing voters who have registered during this period to vote & amending section, etc.	2/6/75	Scully	2/21/75	DO PASS AS AMENDED	2/21/75
HB 617	An act to establish a procedure to hold lobbyists accountable for unprofessional conduct.	2/6/75	Vincent	2/22/75	AS AMENDED DO NOT PASS	2/24/75
HB 613	To provide a separate penalty for persons not reporting adoptions; provide an alternative to the fine & lessen the penalty for procuring adoptions without a license.	2/6/75	Palmer	2/22/75	DO NOT PASS	2/24/75
HB 626	An act creating an election commission to set limits on political campaign spending & disburse public funds for the general election, etc.	2/6/75 2/28/75	Halvorson	2/22/75	2/28/75 sent back to this committee AS AMENDED DO PASS	2/24/75
HB 637	To amend prisoner furlough program providing for supervision of prisoners by public & private supervising agencies & placing resp. for prgrm, etc.	2/7/75	Holmes	2/17/75	DO PASS AS AMENDED	2/21/75

would be reviewing applications as they come up for parole. The full time board member would have supervision over the entire picture.

Representative Baeth questioned if one full time parole board member wouldn't he make all the decisions to which Representative McKittrick answered they could promulgate rules and decisions but they don't want to write this into the law. He hopes the other two won't just rubber stamp. They could use three full time board members.

In answer to question by Representative Scully, he was advised the parole board is responsible for executive clemency, parole and whether it can be revoked. The jurisdiction of this particular person is under the jurisdiction of the department of institutions.

Representative Moore stated this bill doesn't authorize a staff. There are some other bills that hinge or affect this bill. This is reason to provide advisory committee that would set policy for the entire corrections division, qualifications for choosing parole board members.

Representative Baeth questioned if there was a fiscal note to which Pat Melby replied that a field staff now exists, this bill would simply transfer them from the board of pardons to the department of institutions. The full time board member could require a fiscal note.

Hearing was then closed on House Bill No. 646.

HOUSE BILL NO. 637 Representative Polly Holmes, District #67, is chief sponsor of this act to amend the prisoner furlough program. She stated she could guarantee there has never been a bill with so much conferring. She provided each committee member with the latest version of the bill because changes had been made from the original bill drafted. She stated that in this bill they refer to the department which means division of corrections. In the event the division of corrections doesn't become a reality it doesn't matter because the parole board will be in the division of corrections department. The bill sets up the procedure for administering the parole board. The parolee may apply at any time except if the warden objects now, the present system allows for graft and not so gentle persuasion. No policy presently written into the law.

She feels the law should make it very clear who is eligible to apply to the parole board. She feels long prison stays don't make people better. Coercion and growth can't happen together. She feels this bill provides us with another provision besides putting people in prison and leaving them there. This new bill adds an element of individual supervisor. It provides for a three way contract which the prisoner can enter into.

Proponent Sheriff Dave Collins of Deer Lodge reported he has never had a failure. If the work furlough didn't work out the department would be notified and they determine if the inmate should be returned to prison or a new contract drawn. He feels the bill protects the rights of a prisoner as a human being and also keeps him on his toes. It gives every prisoner a reason to try - gives him hope.

Proponent former representative Hal Harper, who works in the corrections department, stated he would like to appear in support of this bill as a member of the human services group. He stated their group has done some studying and found that most systems are a response to a pressure group and are greatly fragmented when they get down to the local level.

Proponent Sheriff Herschel from Great Falls stated he had been in the Sheriff's office for thirty years. Stated they are in complete concurrence with this bill. Proponent R. E. Inderland who works for the BIA in the law enforcement division, stated they support this bill. (see prepared statement)

Proponent Jim Lopar, an ex inmate, stated there is a dire need for the work furlough program. He stated he supports the bill 100% and feels there should be a definite furlough program. Proponent Lee Topash, HRDI program of the AFL-CIO, stated that in the past year of working at the prison the inmates would like to have a little input, a little part of the action and this bill gives the inmate a chance to have some say so. Proponent Nick Rotering, an attorney with the department of institutions, stated the department readily endorses this concept. Feels the committee should consider adding a severability clause. Proponent Bonnie Wallen, representing the League of Women Voters stated they support this bill. They support a government that is responsive to the needs of the people.

Proponent Terry Bass, acting manager of the Montana Contractors Association, talked about the disadvantaged minority and disadvantaged white people. They feel institutionalized men deserve a chance. Urged support of this bill. Mark Cramer, representing the Missoula Technical Center, stated he supports what Mr. Bass said and also the bill. Proponent Karen Olson, outside coordinator for native American class, stated this bill gives young men a chance to do something with their lives. Representative Holmes also read a letter from Dr. Vandiver, a criminologist at the U of M, who supports this piece of legislation.

Tom Honzel, who stated he was neutral, represents the Montana County Attorneys' Association. He stated they object to the hearing process found on page 10. They are glad to see the board of pardons has this responsibility.

Representative Holmes, in closing, stated that Dr. Vandiver would be here the next day and would be happy to work with Mr. Rotering if he would like.

Representative Meloy questioned whether our state prison provides any kind of training program that will prepare a man for the outside to which Mr. Topash replied there are three training programs now, they are not doing all that good a job. They are being used for production purposes.

Hearing was then closed

HOUSE BILL NO. 364 Representative Esther Bengtson, District #59, is chief sponsor of this act to provide for the election of Supreme Court justices from districts apportioned on the basis of population and to provide for the election of a chief justice by the justices of the Supreme Court.

She stated the viability of the elective process must extend to the third branch of our government. Feels philosophy may well differ from district to district. The cost of the campaign would be reduced in a district system. Accountability should be applied realistically to the judicial court system. South Dakota is the only state she could find that elects by district. Under Article VII of the Constitution she can see no reason why this wouldn't be constitutional.

No proponents present though Representative Bengtson stated that Russ Fillner had intended to be present.

No opponents.

In closing Representative Bengtson stated an amendment should be made deleting the reference to method of electing judges, this is a technicality. Also, line 24 on page 2 should be deleted as she thinks this is unnecessary.

Representative Moore stated that one thing that seems to be missing is what does the law do that will give us a judge with greater ability, larger capacity to interpret and administer the law. Representative Meloy stated that regardless of whether you agree the judge will be elected or appointed they will be elected, the electors vote for the best candidate. The bill attempts to narrow down the relationship of people to candidate, narrow down the number of people the candidate has to talk to.

Representative Moore questioned and was told the judge doesn't have to be from the district he runs in, Representative Bengtson feels this is spelled out in the transition portion of the bill.

There were no further questions and the hearing was closed.

HOUSE BILL NO. 437 Representative John Vincent, District #78, is chief sponsor of this act ordering a referendum to amend reducing to one and one fourth percent the allowable monthly interest charge on retail charge accounts. He stated the question is whether we think this is an issue that should be presented to the people on whether interest rates are too high. There is one correction to

Amend House Bill No. 637, introduced bill as follows:

1. Amend page 7, section 6, subsection(2), line 11.

Following: "confinement."

Insert: "Final authority in all matters pertaining to prisoner furloughs shall rest with the department. When an inmate is to reside in the county jail, the consent of the sheriff in the receiving county is necessary. However, when the inmate is to reside in a community corrections center or some other supervised setting the sheriff of the receiving county shall be notified."

2. Amend page 11, section 10, following line 4.

Insert: a new subsection and renumber subsequent subsections

"(4) If, after a reasonable time, a furloughed prisoner should determine that his furlough plan is unsatisfactory due to personality conflict, a violation of his rights by his supervisor, or a change of interest or employment status, the board shall grant him a hearing for the purpose of determining whether or not a new furlough plan shall be executed."

PROPOSED AMENDED VERSION:

VINCENT

BILL NO. 637

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER
FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY

POPULAR AND PRIVATE SUPERVISING AGENCIES, AND PLACING

RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF

INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH

95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M.

1947. - *Родина* *Л. А. О'Солтан* *Ташкент*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 95-2217, R.C.M. 1947, is amended to read as follows:

"95-2217. Prisoner furlough program -- purpose and intent. The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison; to increase their responsibility to society; to make it possible that they may, while serving their sentences, work gainfully to support their dependants in whole or in part; and providing for a the minimum hourly wage required by law of--one--and 40/100--(40/100)--dollars-an-hour to be paid to said convicts while so employed; continue their education or training; and at the same time fulfill the obligations of the sentence of

imprisonment imposed; placing the establishment, regulation, guidance, and control of such program under the direction of the warden-of-the-state-prison department of institutions with the advice and consent of the state--board-of--pardons furlough committee created in section 4 of this act which program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes. This act is to be liberally construed to effect the over-all objectives set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to read as follows:

"95-2218. Definitions. Unless the context requires otherwise, in this act:

(1) "Board Department" means the state--board--of
pardons department of institutions provided for in section
 82A-804 82A-801;

(2) "State prison" means the Montana state prison at Deer Lodge and any adult correctional facility under the
direction of the department;

(3) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison;

(4) "Sheriff Supervising agency" means any county sheriff--including--all--deputies--or--other--persons--working

~~under his direction or guidance~~ federal, state, county, local or private agency, Indian tribe and reservation, or any person, group, association or organization approved by the department to undertake the supervision of prisoners participating in the furlough program;

(5) "Jail" means any county jail;

(6) "Warden ~~Furlough committee~~" means the ^{Board} superintendent of the state prison appointed by the board of institutions committee established in section 4 of this

Act Board of Pardons provided for in § 82A804

(7) "Applicant" means any prisoner who has signed an application to participate in the prisoner furlough program."

Section 3. Section 95-2219, R.C.M. 1947, is amended to read as follows:

"95-2219. Warden Department to establish program and rules -- privileges granted prisoners. The warden department is authorized and directed to establish a furlough program and rules to implement and control the same, in accordance with the provisions of Title 82, chapter 42, R.C.M. 1947. A prisoner sentenced to the state prison may be granted the privilege of Rules shall include provisions for:

(1) Working at paid employment for a rate of pay not less than one and 40/100 (\$1.40) dollars an hour or the minimum hourly wage as required by law;

(2) Participating in an educational or training program;

(3) Approval of supervising agency; and

(4) Review of determinations in furlough application."

Section 4. There is a new R.C.M. section numbered 95-2219.1 that reads as follows:

95-2219.1. Creation of furlough committee -- composition. There is created a prisoner furlough committee at the state prison. It shall be composed of the following staff members of the prison:

- (1) The warden or his designated representative;
- (2) Employment counselor;
- (3) Applicant's social case worker;
- (4) Psychologist (or psychiatrist);
- (5) Member chosen by the applicant.

Each member shall have an equal vote in all proceedings. The furlough committee shall meet on a regular monthly schedule which shall be adopted, printed and circulated throughout the prison. Each inmate of the prison shall be notified of any variation in the schedule at least one week in advance of the rescheduled meeting.

Section 5. Section 95-2220, R.C.M. 1947, is amended to read as follows:

"95-2220. Application for participation in furlough program. Any prisoner confined in the state prison may make

1 application to participate in the furlough program according
2 to rules adopted by the warden with the advice and consent
3 ~~of the board after having served at least one-half (1/2) of~~
4 AT LEAST BY THE TIME HE HAS
5 the time required to be considered for parole."

6 Section 6. Section 95-2221, R.C.M. 1947, is amended to
7 read as follows:

8 "95-2221. Consideration of application -- furlough
9 plan -- ~~consent of sheriff necessary~~ duties of ~~committee~~ BOARD.

10 (1) At the monthly meeting of the furlough committee BOARD
11 following the signing of any prisoner's application, the
12 ~~board~~ BOARD shall approve or deny the application of
13 the each prisoner after careful study of the ~~prisoner's~~
14 ~~conduct, attitude and behavior in the prison in which the~~
15 ~~prisoner is confined~~ his furlough plans, his criminal
16 history, and all other pertinent case material. BOARD
17 following rules shall be observed when the committee meets
18 to consider any application:

19 (a) every applicant shall be allowed to call two (2)
20 witnesses from outside the institution to testify as to his
21 general attitude, participation in self-help activities, or
22 his character or job references;

23 (b) ~~every applicant shall be allowed one summary~~
24 ~~dismissal of any committee member for reason of personality~~
25 ~~conflict, in which event an appropriate and mutually~~
~~agreeable substitute shall be made;~~

1 every applicant shall remain present during the
2 discussion of his application by the committee and be given
3 an oral decision on his application before the adjournment
4 of the committee. BOARD Nothing contained herein shall be
5 construed to allow an executive session of the BOARD
6 committee to be held in the absence of the applicant;

7 (c) every applicant shall be viewed singly, and shall
8 be recognized as an individual, with individual problems,
9 and individual capabilities; the decision of the BOARD
10 shall take into account the potential of the individual and
11 shall determine the course which is most likely to provide
12 optimum benefit to both society and the individual;

13 (d) each applicant shall be allowed to discuss any
14 specific problem areas with any member of the BOARD
15 committee.

16 (e) a secretary shall be in attendance at each meeting
17 to record the entire proceedings, including the
18 determination of the BOARD, and the record shall be sent
19 to each person participating in the meeting within ten (10)
20 days following the meeting and the original copy shall be
21 filed with the department.

22 (2) If the application is approved, the warden
23 department shall, ~~adopt a furlough plan for the prisoner~~
24 within the shortest possible period of time, locate an
25 agency capable of supervising the prisoner applicant. The

MB637

1 supervising agency, the department, and the prisoner
2 applicant shall enter into a written agreement setting out
3 the conditions and purposes of the furlough and specifying
4 the responsibility assumed by each of the parties. The
5 agreement shall be executed, signed by the parties before a
6 notary public, in triplicate, with one copy each to be filed
7 with the ~~committee~~ ^{SUPERVISING AGENCY} and the department and one copy to be
8 retained by the applicant. Upon the signing of the
9 agreement, the prisoner will be released to the supervising
10 agency, which shall constitute an extension of the limits of
11 confinement.

★ AMENDED PARAGRAPH

12 (3) ~~No prisoner shall be released without the written~~
13 ~~consent of the sheriff of the county receiving the prisoner~~
14 ~~If the application is denied the prisoner may reapply after~~
15 ~~six (6) months time. After an applicant has been denied~~
16 ~~three (3) times he may appeal to the department for a~~
17 ~~hearing by the board of pardons.~~

18 Section 7. Section 95-2222, R.C.M. 1947, is amended to
19 read as follows:

20 "95-2222. Disposition of prisoner's earnings -- trust
21 fund -- schooling costs. (1) A prisoner employed in the
22 community under a work furlough plan shall ~~surrender to the~~
23 ~~sheriff his total earnings less payroll deductions required~~
24 ~~by law. The sheriff shall deduct from each earnings in the~~
25 ~~following order of priority enter into a written financial~~

1 agreement with the supervising agency and the department
2 concerning the acquisition and disposition of his earnings.
3 This financial agreement shall provide for the payment of:

4 (a) ~~A standard charge for all prisoners determined by~~
5 ~~the county commissioners to be the case to the county of~~
6 providing food, lodging and clothing for each the prisoner
7 if incurred and if applicable;

8 (b) The actual and necessary travel and other expenses
9 of each the prisoner under furlough from actual confinement
10 under the program; and

11 (c) Each An amount ^{IN} as the prisoner may be determined
12 by the ~~sheriff~~ ^{BOARD} to pay for the support of his
13 dependents, which amount shall be paid to each the
14 dependents; and

15 (d) A ~~minimal~~ An allowance for personal items, and
16 other expenses or disbursements agreed upon by the prisoner
17 and the supervising agency.

18 (2) Unless the financial agreement specifically
19 provides for other disbursement of the money, Any any
20 balance remaining after each deductions and payments shall
21 be deposited to an interest-bearing account held in trust
22 for each the prisoner and shall be paid to him upon release.

23 (3) If no other sources of support are available, the
24 above the costs of a prisoner under furlough who is in
25 training or school shall be the responsibility of the

(Here you may want to change
department" to board)



OVERSEEING

state."

Section 8. Section 95-2223, R.C.M. 1947, is amended to read as follows:

"95-2223. Administrative rules -- co-operation by state agencies. (1) The warden department is authorized to make rules for the administration of the provision of this act ~~with the advice and consent of the board~~ in accordance with Title 82, chapter 42, R.C.M. 1947.

(2) All state, county and local agencies shall co-operate ~~with the warden and sheriff~~ in the administration of the furlough program."

Section 9. Section 95-2224, R.C.M. 1947, is amended to read as follows:

"95-2224. Prisoner not agent, employee or involuntary servant ~~of warden or sheriff~~. No prisoner employed in the community under the provisions of this act shall be deemed to be an agent, employee or involuntary servant of the warden or sheriff department or of the supervising agency while released from confinement pursuant to the terms of the furlough program. Abuse of this section shall be deemed official misconduct pursuant to 94-7-401, R.C.M. 1947."

Section 10. There is a new R.C.M. section numbered 95-2226.1 that reads as follows:

95-2226.1. Responsibility ^{of} department and supervising agency ~~---~~ ^{CHANGE OR} revocation of furlough -- escape. (1)

The department shall be responsible for the ~~activities~~ of a prisoner participating in a furlough program under this act. The supervising agency shall be responsible for these activities of a furloughed prisoner for which it is responsible in the written furlough agreement.

(2) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules and regulations of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency. If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, ~~the department shall file an affidavit in the district court of the county in which the violation took place charging the prisoner with a violation of the rules and regulations of the furlough agreement. The district court shall hold a hearing on the charge at which the prisoner is entitled to have counsel appointed to represent him. Upon determining that the prisoner has violated the rules and regulations of the furlough agreement, the court shall order the prisoner returned to prison.~~ BOARD

(3) If the department determines that a prisoner presents an immediate grave threat to the community in which he is furloughed, it may order the prisoner returned to prison before a hearing is held, but in this case a hearing

MBL 30

on the charges against the prisoner, as provided for in the above subsection, must be held ~~in the district court~~ ^{BY THE BOARD} no later than ten (10) days after the return of the prisoner to the state prison.

★ AMENDED PARAGRAPH (4)

5 If a prisoner, while not disabled from working by temporary illness, is unemployed for a period of thirty (30) days, or more, after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to ^{any} the union to which the prisoner belongs, or if a prisoner has become so disabled as to be unemployable, or if a prisoner is on an educational furlough and has demonstrated for a period of six (6) weeks or more that he is unable to benefit from schooling or training, then the prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training. At this conference the prisoner may request that his supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference. If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the

department may file an affidavit in the district court of the county in which the prisoner is furloughed, stating that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program and requesting a hearing to determine an alternate proposal. In this hearing the prisoner is entitled to have counsel appointed to represent him. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the court shall order the prisoner returned to the prison.

For the purpose of this act, the provisions relating to escape in section 94-7-306, R.C.M. 1947, shall apply, unless aggravating circumstances require a more severe penalty.

Section 11. Section 82-4202, R.C.M. 1947, is amended to read as follows:

"82-4202. Definitions. For purposes of this act:

(1) "Agency" means any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases, except that the provisions of this act shall not apply to the following:

(a) the legislature and any branch, committee or officer thereof;

1 (b) the judicial branches and any committee or officer
2 thereof;

3 (c) the governor, except that an agency otherwise
4 covered by this act shall not be exempt because the governor
5 has been designated as a member thereof;

6 (d) the state military establishment and agencies
7 concerned with civil defense and recovery from hostile
8 attack;

9 (e) the state board of pardons, except that said board
10 shall be subject to the requirements of section 3 [82-4203]
11 and 5 [82-4205] of this act and its rules shall be published
12 in the Montana administrative code and register;

13 (f) the supervision and administration of any penal,
14 mental, medical or eleemosynary institution with regard to
15 the admission, release, institutional supervision, custody,
16 control, care or treatment of inmates, prisoners or
17 patients, except as provided in sections 95-2219 and
18 95-2223, R.C.M. 1947;

19 (g) the administration and management of educational
20 institutions;

21 (h) the financing, construction and maintenance of
22 public works.

23 (2) "Rule" means each agency regulation, standard or
24 statement of general applicability that implements,
25 interprets, or prescribes law or policy or describes the

1 organization, procedures, or practice requirements of an
2 agency. The term includes the amendment or repeal of a prior
3 rule, but does not include:

4 (a) statements concerning only the internal management
5 of an agency and not affecting private rights or procedures
6 available to the public;

7 (b) declaratory rulings issued pursuant to section 18
8 [82-4218] of this act;

9 (c) intra-agency memoranda;

10 (d) rules relating to the use of public works,
11 facilities, streets and highways, when the substance of such
12 rules is indicated to the public by means of signs or
13 signals;

14 (e) seasonal rules adopted annually relating to
15 hunting, fishing and trapping when there is a statutory
16 requirement for the publication of such rules, and rules
17 adopted annually relating to the seasonal recreational use
18 of lands and waters owned or controlled by the state when
19 the substance of such rules is indicated to the public by
20 means of signs or signals;

21 (f) rules relating to personnel standards, job
22 classifications or salary ranges for agency employees;

23 (g) uniform rules adopted pursuant to interstate
24 compact, except that such rules shall be filed in accordance
25 with section 10 [82-4210] of this act and shall be published

Handwritten signature or initials

1 in the Montana administrative code and register.

2 (3) "Contested case" means any proceeding before an
3 agency in which a determination of legal rights, duties or
4 privileges of a party is required by law to be made after an
5 opportunity for hearing. The term includes, but is not
6 restricted to, rate making, price fixing and licensing.

7 (4) "License" includes the whole or part of any agency
8 permit, certificate, approval, registration, charter or
9 other form of permission required by law, but does not
10 include a license required solely for revenue purposes.

11 (5) "Licensing" includes any agency process respecting
12 the grant, denial, renewal, revocation, suspension,
13 annulment, withdrawal, limitation or amendment of a license.

14 (6) "Party" means any person or agency named or
15 admitted as a party, or properly seeking and entitled as of
16 right to be admitted as a party; but nothing herein shall be
17 construed to prevent an agency from admitting any person or
18 agency as a party for limited purposes.

19 (7) "Person" means any individual, partnership,
20 corporation, association, governmental subdivision or public
21 organization of any character other than an agency."

22 Section 12. Section 95-2226, R.C.M. 1947, is repealed.

-End-

ec



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

BILLINGS AREA OFFICE

316 NORTH 26TH ST.

BILLINGS, MONTANA 59101

REPLY REFER TO:

Prison Coordinator
Box 713, Deer Lodge

13 February 1975

Rep. Polly Holmes
State Capital Building
Helena, Montana

Re: Recommendations in favor of House Bill 637 "Prisoner Furlough Program"

Dear Polly;

I have reviewed the House bill as requested and also reviewed the Dept. of Institutions bill that was introduced in the Senate. The Senate Bill would resolve some difficulties in the present law but does not resolve other serious omissions in present work furlough statutes. I refer to the matters of (1) due process in selection, (2) equal opportunity for Indian inmates, and (3) accountability to the electorate.

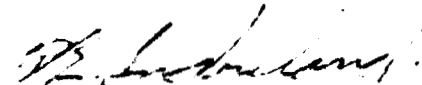
The Senate Bill would be greatly improved if amended as follows;

1. eliminate the criteria of "one year to parole" and substitute "have served at least $\frac{1}{2}$ the time required for parole eligibility"
2. provide for supervision agreements with Indian Tribal governments.
3. Require that "The Board of Pardons" will grant or deny work furlough privilege after conducting a review of the application, a study of prison staff recommendations, and a personal interview with the applicant by the Board".

House Bill 637 is the superior bill. I believe it would be improved by the following changes;

1. The selection committee should consist of "The Board of Pardons meeting together with such Prison staff as the Board of Pardons shall select". I believe this would be more in line with the principles of division of power and responsibility to the electorate.
2. On page 5, eliminate lines 22 through 25.
3. On page 6, lines 7,8,9,10,11, and 12, eliminate everything after the words "viewed singly".
4. Amendment to page six (item G) should be left out.
5. On page 7, lines 15,16, and 17 the last sentence should be eliminated.

I will be glad to testify in favor of House bill 637. The contents of this letter may be used for the record or in any way you see fit.


R.E. Indreland, Coordinator
Law Enforcement Branch
U. S. Bureau of Indian Affairs

HOUSE BILL NO. 637 This is Representative Holmes' prisoner furlough bill. Representative Day moved DO NOT PASS. Representative Kimble made a substitute motion of DO PASS.

Staff attorney Diana Dowling explained the amendments proposed to this bill (see exhibit). She stated that this bill puts control in the department of institutions. It goes into long rules on application for furlough, some technical problems, says the court where it should say board. The big difference is it gives jurisdiction to the department instead of the board of institutions. It covers the application for prison furlough.

Representative Meloy stated this bill is the result of Representative Holmes' series of meetings with prisoners. It may not have any legal meaning, but she wants them to be considered as individuals worth feelings.

Representative Moore stated that Representative Holmes seemed to try to get in and touch bases with everyone involved in the problem. The Senate bill codifies what is already being done. This bill is less arbitrary and harsh, thinks the bill at least deserves trying.

Representative Kimble stated he had a great deal of experience with inmates. Is working in many of these programs. There is a whole power structure within the prison which the warden fosters. He stated you are naive if you don't believe in this power structure. By the recommendation of the guards you can get in trouble

Representative Kimble moved DO PASS on the latest version of HB 637 (see exhibit) and moved the amendments of the latest version. Motion to amend carried.

Representative Kimble moved DO PASS AS AMENDED. Motion carried with Representative Yardley voting no.

HOUSE BILL NO. 644 Representative Babcock is chief sponsor of this act requiring the compensation of personal representatives and attorneys to be reasonable and determined by the court under the Montana Uniform Probate Code.

Representative Meloy stated that one of the problems with this bill is that lawyers have to get along with fellow lawyers, they can't cut fees too much or they get in trouble. Upon questioning it was learned that you can go to a lawyer and ask him to do it by the hour. Representative Halvorson stated she thought the public would be happy to see a fee schedule written down.

Representative Baeth moved DO NOT PASS. Motion carried with Representative Yardley abstaining, Representative Rasmussen voting no.

COMMITTEE ON JUDICIARY AMENDMENTS TO HOUSE BILL NO. 637

4. Amend page 3, section 2, subsection (6), lines 7 through 10.
Strike: Subsection (6) in its entirety.
ReNUMBER: Subsequent subsection.
5. Amend page 3, section 3, subsection (1), line 25.
Following: "law"
Insert: "or the prevailing rate of pay for persons employed in similar occupations by the same employer"
6. Amend page 4, section 3, subsection (2), line 1.
Following: "educational"
Insert: ", treatment,"
7. Amend page 4, section 4, lines 5 through 21.
Strike: Section 4 in its entirety.
ReNUMBER: Subsequent sections.
8. Amend page 5, section 5, line 3.
Following: "heard"
Strike: "after having served"
9. Amend page 5, section 5, line 3.
Following: "at least"
Insert: "by the time the inmate has served"
10. Amend page 5, line 5 through page 7, line 17.
Strike: Present section 6 in its entirety.
Insert: A new section to read as follows:
"Section 5. Section 95-2221, R.C.M. 1947, is amended to read as follows:
"95-2221. Consideration of application--furlough plan--notification or consent of sheriff necessary--duties of board.
(1) At the meeting of the board following the signing of any prisoner's application the board shall approve or deny the application of the each prisoner after careful study of the prisoner's conduct, attitude and behavior in the prison in which the prisoner is confined, his furlough plans, criminal history, and all other pertinent case material. The following rules shall be observed when the board meets to consider an application:
(a) each applicant may call two (2) witnesses from outside the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references;

(Continued on page 3)

HOUSE OF REPRESENTATIVES

February 21, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO HOUSE BILL NO. 637

(b) each applicant shall remain present during the discussion of his application by the board and be given an oral decision on his application before the adjournment of the board as well as a written decision including a thorough statement of reasons for the decision;

(c) each applicant shall be viewed singly, and shall be recognized as an individual;

(d) each applicant shall be allowed to discuss any specific problem areas with any member of the board.

(2) If the application is approved, the warden-shall-adopt a-furlough-plan-for-the-prisoner, which-shall-constitute-an extension-of-the-limits-of-confinement, department shall: within the shortest possible time, locate an agency capable of supervising the applicant.

(3) No-prisoner-shall-be-released-without-the-written-consent of-the-sheriff-of-the-county-receiving-the-prisoner. The supervising agency, the department, and the applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a notary public, in triplicate, with one copy to be filed with the supervising agency and the department and one copy to be retained by the applicant.

(4) Upon the signing of the agreement, the prisoner shall be released to the supervising agency.

(5) Final authority in all matters pertaining to prisoner furloughs is in the department.

(6) When an inmate is to reside in the county jail, the consent of the sheriff in the receiving county is necessary. However, when the inmate is to reside in a community corrections center or some other supervised setting the sheriff of the receiving county shall be notified.

(7) If the application is denied the prisoner may reapply after six (6) months time. After an applicant has been denied three (3) times he may appeal to the department for a hearing."

11. Amend page 9, section 10, line 25.

Following: "agency--"

Insert: "change or"

12. Amend page 10, section 10, subsection (1), line 2.

Following: "act."

Insert: "The department may delegate jurisdictional supervision of work furlough participants to the adult parole and probation field service."

13. Amend page 10, section 10, subsection (2), lines 13 through 17.

Following: "noncompliance,"

Strike: "the department shall file an affidavit in the district

(Continued on page 4)

HOUSE OF REPRESENTATIVES

February 21, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO HOUSE BILL NO. 637

court of the county in which the violation took place charging the prisoner with a violation of the rules and regulations of the furlough agreement. The district court"
Insert: "the board"

14. Amend page 10, section 10, subsection (2), line 20.
Following: "agreement, the"
Strike: "court"
Insert: "board"
15. Amend page 10, section 10, subsection (3), line 22.
Following: "determines"
Insert: "after having been advised by the supervising agency or the adult parole and probation field service,"
16. Amend page 11, section 10, subsection 3, line 3.
Strike: "ten (10)"
Insert: "thirty (30)"
17. Amend page 11, section 10, subsection (3), following line 4.
Insert: A new subsection (4) to read as follows:
"(4) If, after a reasonable time, a furloughed prisoner determines that his furlough plan is unsatisfactory due to personality conflict, a violation of his rights by his supervisor, or a change of interest or employment status, the department shall grant him a hearing to determine whether or not a new furlough plan should be executed."
Renumber: Subsequent subsections.
18. Amend page 11, section 10, subsection (4), line 15.
Following: "schooling"
Insert: ", treatment,"
19. Amend page 11, section 10, subsection (4), line 21.
Following: "request that"
Strike: "his"
20. Amend page 12, section 10, subsection (4), lines 1 through 5.
Following: "may"
Strike: "file an affidavit in the district court of the county in which the prisoner is furloughed, stating that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program and requesting a hearing"
Insert: "request a hearing by the board of pardons"
21. Amend page 12, section 10, subsection (4), line 10.
Following: "the"
Strike: "court"
Insert: "board"

(Continued on page 5)

27

HOUSE OF REPRESENTATIVES

February 21, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO HOUSE BILL NO. 637

22. Amend page 12, line 16 through page 15, line 21.

Strike: Present section 11 in its entirety.

Insert: New sections 10 and 11 to read as follows:

"Section 10. All rules promulgated under this act shall comply with the Montana administrative procedure act.

Section 11. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Renumber: Subsequent section.

AS SO AMENDED

DO PASS

HERB HUENNEKENS, CHAIRMAN

HH:pb

STANDING COMMITTEE REPORT

February 21, 1975

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **637**

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH 95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M. 1947."

Respectfully report as follows: That **HOUSE** Bill No. **637**

Be amended in the introduced bill as follows:

1. Amend page 1, section 1, line 22.
Following: "law"
Insert: "or the prevailing rate of pay for persons employed in similar occupations by the same employer"
2. Amend page 2, section 1, lines 3 through 5.
Following: "institutions"
Strike: "with the advice and consent of the state-board-of pardons furlough committee created in section 4 of this act which"
Insert: ". The prisoner"
3. Amend page 2, section 2, subsection (1), following line 18.
Insert: A new subsection (2) to read as follows:
"(2) "Board" means the board of pardons provided for in section 82A-804."
Renumber: Subsequent subsections.

SWAK

(Continued on page 2)

COMMITTEE ON STATE ADMINISTRATION

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 561	2-26-75	3-12,17-75	3-17-75					3-17-75	
HB 565	2-18-75	3-13-75	3-13-75				3-13-75		
HB 568	2-27-75	3-11,13-75	3-13-75				3-13-75		
HB 570	2-22-75	3-13-75	3-13-75				3-13-75		
HB 598	2-20-75	3-10,13-75	3-13-75				3-13-75		
HB 602	3-7-75	None	3-11-75	Transferred to Judiciary Committee					
HB 603	2-19-75	3-13,17-75	3-17-75						3-17-75
HB 607	2-19-75	3-7,19-75	3-19-75					3-19-75	
HB 621	3-7-75	3-10,18-75	3-18-75					3-18-75	
HB 637	3-4-75	None	3-7-75	Transferred to Judiciary Committee					
HB 646	3-7-75	3-13,17-75	3-17-75					3-17-75	
HB 648	2-25-75	None	3-5-75	Transferred to Labor and Employment Relations					
HB 699	2-28-75	3-14,17-75	3-17-75					3-17-75	

HB 561, 565, 568, 570, 598, 603, 607, 621, 646, 648, 699

COMMITTEE ON JUDICIARY

<u>HOUSE</u> <u>BILL NO.</u>	<u>ENTERED</u> <u>COMM.</u>	<u>DATE</u> <u>CONSIDERED</u>	<u>OUT OF</u> <u>COMM.</u>	<u>DO PASS</u> <u>DATE</u>	<u>DO NOT</u> <u>PASS</u> <u>DATE</u>	<u>DO PASS</u> <u>AS AMEND.</u> <u>DATE</u>	<u>BE CON-</u> <u>CURRED IN</u> <u>DATE</u>	<u>BE CONC. IN</u> <u>AS AMENDED</u> <u>DATE</u>	<u>BE NOT CON</u> <u>CURRED IN</u> <u>DATE</u>
528	3/7/75	3/17/75	3/25/75					3/25/75	
528	3/29/75	4/1/75	4/2/75					4/1/75	
531	2/28/75	3/12/75	3/13/75					3/12/75	
555	2/26/75	3/17/75	3/18/75					3/17/75	
560	2/28/75	3/15/75	passed until the 75th day						
567	2/28/75	3/13/75	3/14/75					3/13/75	
571	2/22/75	3/17/75	3/18/75					3/17/75	
586	2/28/75	3/17/75	3/18/75					3/17/75	
594	3/4/75	3/17/75	3/20/75						3/19/75
602	3/11/75	3/19/75	3/25/75					3/19/75	
605	2/27/75	3/13/75	die in committee on a tie vote						
613	2/28/75	3/12/75	3/24/75					3/21/75	
620	2/28/75	3/7/75	3/19/75				3/18/75		
620	3/22/75	3/25/75	3/25/75					3/25/75	
633	3/11/75	3/19/75	3/26/75					3/24/75	
637	3/7/75	3/13/75	3/14/75					3/14/75	
640	3/4/75	3/15/75	3/18/75						3/17/75

Whereas: In Senate House Bills and Resolutions

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 13, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:38 A.M. in Room 442 of the Capitol Building.

The following bills were discussed:

HB 471
HB 637
HB 567
HB 605

HB 471 -- Representative Gary Kimble, District 94, and sponsor of the bill, stated the purpose of the bill is to provide the county attorney serving as attorney for the local Board of Health and providing penalties of \$25 - \$500 and/or jail terms for violations of the regulations. The bill was prepared by request of the health departments.

Vern Sloan, representing the Department of Health, stated he assisted with the drafting of the bill and urged support of it.

Les Cramer, representing the District Sanitarians of Montana, stated that group's support of the bill.

HB 637 -- Representative Polly Holmes, District 67, and sponsor of the bill, presented a packet of fact sheets and material to the committee. She stated HB 646 will provide for more meetings of the parole board. At present the recidivism rate for parolees is 35% while there is a 90% success ratio on the work furlough program. She stated 27 organizations have had input to the bill. She noted that work furlough programs are the best working rehabilitation programs working. At present, the work furlough program serves a maximum of ten felons a year with the average running five to six. Currently three Indian reservations have asked for fifteen placements if this bill passes. Representative Holmes noted the longer a man is in prison the poorer citizen he is when he returns to society. This bill seeks to correct many problems currently existent within the present law.

Rasmus Inderland, Prison Program Coordinator, Law Enforcement Division of the U.S. Bureau of Indian Affairs, presented his written testimony to the Committee (attached).

Sheriff John Krsul, representing the Sheriff's Association, stated the work furlough program in Cascade County is working well. He stated that human factors must be considered before the expense of brick and mortar in updating corrections. Sheriffs totally support the

HB 637 -- bill if they are notified in advance.

Pat Melby, Attorney with the Department of Budget and Program Planning, stated the Governor's office is currently working on establishment of a Corrections Division in the Department of Institutions. He supported the bill as it is consistent with present correctional planning.

Boyd Andrew, who presently has in his home eight parolees and work furlough people, agreed with foregoing testimony and supports the bill.

Curt Chisholm, representing the Department of Institutions, Warden Crist and the Director of the Board of Pardons, stated existing legislation is unworkable. He indorsed the work furlough program strongly as a solid rehabilitation tool. He presented a letter from the Board of Pardons member, Henry Burgess, to the committee (attached).

Bill Ryan, U. S. Jaycee Criminal Justice Chairman, supported the bill on behalf of the Jaycee Criminal Justice Program.

Cap Bryant, representing the Sheriffs and Peace Officers Association, expressed the full support of that organization for the bill. He stated in his 16 years as a Deputy Sheriff he had seen the program work well and strongly urged passage.

John Thomas, Department of Institutions, Community Based Services, Aftercare Division, told the committee how well the juvenile program works in this area. Only 3.5% of their group has entered prison and he feels this is due to the flexibility and scope of the program. He highly supports the bill.

HB 567 -- Representative James Moore, District 18, and sponsor of the bill stated the purpose of the bill is to insure that an attorney under charges in a case should also be brought in front of the Commission on Practices of the Supreme Court. He could be disciplined there without being charged and sentenced as the Supreme Court enforces the Canons of Ethics.

HB 605 -- Representative John Scully, District 76, and sponsor of the bill presented a letter from the Gallatin County Commissioners in opposition to HB 605 (attached). The purpose of the bill is to provide a second judge in the 18th Judicial District. He presented a fact sheet to the Committee (attached). He stated the bill was not prepared as a criticism of the current judge who is extremely well qualified, well disciplined and organized. This judge will retire in two years and it was felt another judge should be broken in during this time.

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 13, 1975

The meeting was called to order by Senator Towe, Chairman, at 3:35 P.M. in Room 442 of the Capitol Building.

The Committee met in Executive Session.

EXECUTIVE SESSION

HB 613 -- SENATOR TURNAGE MOVED HB 613 BE NOT CONCURRED IN. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS GREELY AND CETRONE VOTING NO AND SENATOR ROBERTS ABSENT.

HB 471 -- SENATOR GREELY MOVE HB 471 BE CONCURRED IN. Following discussion, Senator Greely withdrew his motion.

Senator Turnage moved Section 3 be stricken in its entirety. THE MOTION FAILED ON A ROLL CALL VOTE, WITH SENATORS TOWE, CETRON, WARDEN AND GREELY VOTING NO.

Senator Turnage moved to reinstate all the stricken material on page 3 and 4. He included in that motion the amendment to the title and a new subsection (4) (See attached Committee Report). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

SENATOR TURNAGE MOVED HB 471 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 637 -- Senator Greely moved the attached amendments to the bill with the exception of number 4. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Towe moved to amend page 12, line 1 by inserting, "be encouraged to" before "cooperate". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved to amend page 4, line 3, by inserting "." after "same" and deleting the rest of line 4; and to strike section 10, page 19 in its entirety. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR TOWE VOTING NO.

Senator Drake moved HB 637 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 605 -- Senator Drake moved HB 605 be not concurred in. SENATORS BROWN, ROBERTS, TOWE AND CETRONE VOTED NO. THERE BEING NO FURTHER MOTION, THE BILL WILL DIE IN COMMITTEE.

HB 567 -- Senator Turnage moved to amend page 1, line 7; page 1, line 23; page 2, line 1. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

STANDING COMMITTEE REPORT

March 17,

19 75

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE

Bill No. 637

Respectfully report as follows: That HOUSE Bill No. 637,

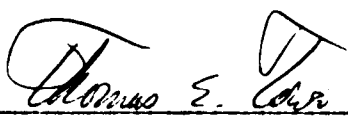
third reading, be amended, as follows:

1. Amend page 3, section 2, line 15.
Following: "jail"
Insert: "or tribal jail"
2. Amend page 4, section 3, lines 3 and 4.
Following: "same"
Strike: lines 3 and 4 in their entirety
Insert: "."
3. Amend page 8, section 5, line 13.
Following: "outside"
Insert: "or inside"
4. Amend page 9, section 5, line 24.
Following: "county"
Insert: "or tribal"
5. Amend page 9, section 5, line 25.
Following: "sheriff"
Insert: "or tribal chief of police"

6. Amend page 9, section 5, line 23.
Following: "county"
Insert: "or reservation"
7. Amend page 10, section 5, line 3.
Following: "sheriff"
Insert: "or tribal chief of police"
8. Amend page 10, section 55, line 3.
Following: "county"
Insert: "or reservation"
9. Amend page 11, section 7, line 23.
Following: "shall"
Insert: "be encouraged to"
10. Amend page 13, section 9, line 11.
Following: "court"
Strike: "line 11 in its entirety"
Insert: "The prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists."
11. Amend page 13, section 9, line 12.
Following: line 11
Strike: "the"
Insert: "The"
12. Amend page 13, section 9, lines 13 through 16.
Following "him"
Strike: lines 13 through 16 in their entirety
Insert: " at the hearing. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under section 95-3220, R.C.M. 1947, pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison. At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has, in fact, violated the terms of the prisoner's furlough release. If it is determined that the prisoner has, in fact, violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."

13. Amend page 13, section 9, line 24.
Following: "heli"
Strike: "in the district court"
Insert: "by the board"
14. Amend page 14, section 9, line 13.
Following: "and to"
Strike: "the"
Insert: "any"
15. Amend page 19, section 10, lines 1 through 2.
Strike: section 10 in its entirety

AND AS SO AMENDED, BE CONCURRED IN



CHAIRMAN

March 18, 1975

SENATE COMMITTEE ON JUDICIARY
AMENDMENTS TO HOUSE BILL NO. 637

That House Bill No. 637, third reading, be amended as follows:

1. Amend page 3, section 2, line 15.
Following: "jail"
Insert: "or tribal jail"
2. Amend page 4, section 3, lines 3 and 4.
Following: "same"
Strike: lines 3 and 4 in their entirety
Insert: "."
3. Amend page 8, section 5, line 18.
Following: "outside"
Insert: "or inside"
4. Amend page 9, section 5, line 24.
Following: "county"
Insert: "or tribal"
5. Amend page 9, section 5, line 25.
Following: "sheriff"
Insert: "or tribal chief of police"
6. Amend page 9, section 5, line 25.
Following: "county"
Insert: "or reservation"
7. Amend page 10, section 5, line 3.
Following: "sheriff"
Insert: "or tribal chief of police"
8. Amend page 10, section 5, line 3.
Following: "county"
Insert: "or reservation"
9. Amend page 11, section 7, line 25.
Following: "shall"
Insert: "be encouraged to"
10. Amend page 13, section 9, line 11.
Following: "~~court~~"
Strike: line 11 in its entirety
Insert: "The prisoner shall be granted a hearing on the violation within a reasonable time on or near the site of the alleged violation to determine whether a violation of the furlough agreement exists."

11. Amend page 13, section 9, line 12.
Following: line 11
Strike: "the"
Insert: "The"
12. Amend page 13, section 9, lines 13 thorough 16.
Following "him"
Strike: lines 13 through 16 in their entirety
Insert: " at the hearing. The hearing shall be conducted by a hearing officer of the board of pardons. The prisoner on furlough shall have all opportunities provided under section 95-3220, R.C.M. 1947, pertaining to on-site hearings for parole revocation. If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison. At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has, in fact, violated the terms of the prisoner's furlough release. If it is determined that the prisoner has, in fact, violated the terms of the prisoner's furlough, the prisoner shall remain at the prison. If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a parole agent and a new furlough arrangement shall be worked out."
13. Amend page 13, section 9, line 24.
Following: "held"
Strike: "in the district court"
Insert: "by the board"
14. Amend page 14, section 9, line 13.
Following: "and to"
Strike: "the"
Insert: "any"
15. Amend page 19, section 10, lines 1 through 2.
Strike: Section 10 in its entirety
Renumber: All subsequent sections

HOUSE BILL NO. 637

INTRODUCED BY HOLMES, HUENNEKENS, MELOY, WOLFE, VINCENT,

JACK MOORE, JOHNSON, HALVORSON, SHELDEN, GUNDERSON,

DRISCOLL, KEMMIS, GUTHRIE, MCKITTRICK, BRADLEY, RASMUSSEN,

MERCER, SLOAN, BARDANOUVE, DUSSAULT, C.R. ANDERSON,

FINLEY, LORY, KENDALL, ELLIS, RICHARDS, LUEBECK,

O'CONNELL, KIMBLE, TEAGUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND THE PRISONER FURLOUGH PROGRAM PROVIDING FOR SUPERVISION OF PRISONERS BY PUBLIC AND PRIVATE SUPERVISING AGENCIES, AND PLACING RESPONSIBILITY FOR THE PROGRAM WITH THE DEPARTMENT OF INSTITUTIONS BY AMENDING SECTIONS 82-4202, 95-2217 THROUGH 95-2224, R.C.M. 1947, AND REPEALING SECTION 95-2226, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 95-2217, R.C.M. 1947, is amended to read as follows:

"95-2217. Prisoner furlough program — purpose and intent. The purpose and intent of this act is to establish a program for the rehabilitation, education, and betterment of selected prisoners confined in the state prison; to increase their responsibility to society; to make it possible that they may, while serving their sentences, work gainfully to

support their dependents in whole or in part; and providing for ~~the~~ the minimum hourly wage required by law OR THE PREVAILING RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR OCCUPATIONS BY THE SAME EMPLOYER ~~of one and 40/100 (\$1.40) dollars an hour~~ to be paid to said convicts while so employed; continue their education or training; and at the same time fulfill the obligations of the sentence of imprisonment imposed; placing the establishment, regulation, guidance, and control of such program under the direction of ~~the warden of the state prison department of institutions with the advice and consent of the state board of pardons furlough committee created in section 4 of this act which,~~ THE PRISONER program shall operate by supplementing and not replacing established penal procedures now or hereafter established by law and shall serve to extend the limits of confinement for treatment as well as jurisdictional purposes. This act is to be liberally construed to effect the over-all objectives set forth above."

Section 2. Section 95-2218, R.C.M. 1947, is amended to read as follows:

"95-2218. Definitions. Unless the context requires otherwise, in this act:

(1) "~~Board~~ Department" means the ~~state board of pardons department of institutions~~ provided for in section ~~82A-804~~ 82A-801;

1 (2) "BOARD" MEANS THE BOARD OF PARDONS PROVIDED FOR IN
2 SECTION 82A-804.

3 ~~(2)~~ (3) "State prison" means the Montana state prison
4 at Deer Lodge and any adult correctional facility under the
5 direction of the department;

6 ~~(3)~~ (4) "Prisoner" means a person sentenced by a
7 district court to a term of confinement in the state prison;

8 ~~(4)~~ (5) "Sheriff Supervising agency" means any county
9 sheriff including all deputies or other persons working
10 under his direction or guidance federal, state, county,
11 local or private agency, Indian tribe and reservation, or
12 any person, group, association or organization approved by
13 the department to undertake the supervision of prisoners
14 participating in the furlough program;

15 ~~(5)~~ (6) "Jail" means any county jail OR TRIBAL JAIL;

16 ~~(6)~~ "Warden Furlough committee" means the
17 superintendent of the state prison appointed by the board of
18 institutions. ~~committee established in section 4 of this~~
19 ~~act;~~

20 (7) "Applicant" means any prisoner who has signed an
21 application to participate in the prisoner furlough
22 program."

23 Section 3. Section 95-2219, R.C.M. 1947, is amended to
24 read as follows:

25 "95-2219. Warden Department to establish program and

1 rules — ~~privileges granted prisoners.~~ The warden department
2 is authorized and directed to establish a furlough program
3 and rules to implement and control the same. ~~in accordance~~
4 ~~with the provisions of Title 82, Chapter 42, R.C.M. 1947. A~~
5 ~~prisoner sentenced to the state prison may be granted the~~
6 ~~privilege of~~ Rules shall include provisions for:

7 (1) Working at paid employment for a rate of pay not
8 less than one and 40/100 (\$1.40) dollars an hour, or the
9 minimum hourly wage as required by law OR THE PREVAILING
10 RATE OF PAY FOR PERSONS EMPLOYED IN SIMILAR OCCUPATIONS BY
11 THE SAME EMPLOYER;

12 (2) Participating in an educational, TREATMENT, or
13 training program;

14 (3) Approval of supervising agency; and

15 (4) Review of determinations in furlough application."

16 ~~section 4. There is a new R.C.M. section numbered~~
17 ~~95-2219.1 that reads as follows:~~

18 ~~95-2219.1. Creation of furlough committee~~
19 ~~composition. There is created a prisoner furlough committee~~
20 ~~at the state prison. It shall be composed of the following~~
21 ~~staff members of the prison:~~

22 ~~(1) The warden or his designated representative;~~

23 ~~(2) Employment counselor;~~

24 ~~(3) Applicant's social case worker;~~

25 ~~(4) Psychologist (or psychiatrist);~~

~~(5) Member chosen by the applicant.~~

~~Each member shall have an equal vote in all proceedings. The furlough committee shall meet on a regular monthly schedule which shall be adopted, printed and circulated throughout the prison. Each inmate of the prison shall be notified of any variation in the schedule at least one week in advance of the rescheduled meeting.~~

Section 4. Section 95-2220, R.C.M. 1947, is amended to read as follows:

"95-2220. Application for participation in furlough program. Any prisoner confined in the state prison may make application to participate in the furlough program according to rules adopted by the warden with the advice and consent of the board after having served at least BY THE TIME THE INMATE HAS SERVED one-half (1/2) of the time required to be considered for parole."

Section 6. Section 95-2221, R.C.M. 1947, is amended to read as follows:

"95-2221. Consideration of application — furlough plan — consent of sheriff necessary duties of committee.

~~(1) At the monthly meeting of the furlough committee following the signing of any prisoner's application, The board the committee shall approve or deny the application of the each prisoner after careful study of the prisoner's conduct, attitude and behavior in the prison in which the~~

~~prisoner is confined his furlough plans, his criminal history, and all other pertinent case material. The following rules shall be observed when the committee meets to consider any application:~~

~~(a) every applicant shall be allowed to call two (2) witnesses from outside the institution to testify as to his general attitude, participation in self help activities, or his character or job references;~~

~~(b) every applicant shall be allowed one summary dismissal of any committee member for reason of personality conflict, in which event an appropriate and mutually agreeable substitute shall be made;~~

~~(c) every applicant shall remain present during the discussion of his application by the committee and be given an oral decision on his application before the adjournment of the committee. Nothing contained herein shall be construed to allow an executive session of the committee to be held in the absence of the applicant;~~

~~(d) every applicant shall be viewed singly, and shall be recognized as an individual, with individual problems, and individual capabilities; the decision of the committee shall take into account the potential of the individual and shall determine the course which is most likely to provide optimum benefit to both society and the individual;~~

~~(e) each applicant shall be allowed to discuss any~~

~~specific problem areas with any member of the furlough committee;~~

~~(f) a secretary shall be in attendance at each meeting to record the entire proceedings, including the determination of the committee, and the record shall be sent to each person participating in the meeting within ten (10) days following the meeting and the original copy shall be filed with the department.~~

~~(2) If the application is approved, the warden department shall, adopt a furlough plan for the prisoner within the shortest possible period of time, locate an agency capable of supervising the prisoner applicant. The supervising agency, the department, and the prisoner applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a notary public, in triplicate, with one copy each to be filed with the committee and the department and one copy to be retained by the applicant. Upon the signing of the agreement, the prisoner will be released to the supervising agency, which shall constitute an extension of the limits of confinement.~~

~~(3) No prisoner shall be released without the written consent of the sheriff of the county receiving the prisoner~~

~~If the application is denied the prisoner may reapply after six (6) months time. After an applicant has been denied three (3) times he may appeal to the department for a hearing by the board of pardons."~~

SECTION 5. SECTION 95-2221, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"95-2221. Consideration of application—furlough plan—notification or consent of sheriff necessary—duties of board. (1) The At the meeting of the board following the signing of any prisoner's application the board shall approve or deny the application of the each prisoner after careful study of the prisoner's conduct, attitude and behavior in the prison in which the prisoner is confined, his furlough plans, criminal history, and all other pertinent case material. The following rules shall be observed when the board meets to consider an application:

(a) each applicant may call two (2) witnesses from outside OR INSIDE the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references;

(b) each applicant shall remain present during the discussion of his application by the board and be given an oral decision on his application before the adjournment of the board as well as a written decision including a thorough statement of reasons for the decision;

(B) AN APPLICANT MAY REMAIN PRESENT DURING THE BOARD PROCEEDINGS ON HIS APPLICATION; HOWEVER, THE BOARD MAY MEET IN EXECUTIVE SESSION WITHOUT THE APPLICANT FOR FINAL DECISION ON THE APPLICATION;

(C) THE BOARD SHALL CAUSE THE APPLICANT TO BE NOTIFIED OF ITS DECISION IMMEDIATELY AND SHALL PROVIDE THE APPLICANT WITH A WRITTEN DECISION INCLUDING A THOROUGH STATEMENT OF THE REASONS FOR THE DECISION WITHIN TWO (2) DAYS FOLLOWING ADJOURNMENT;

~~(e)~~ (D) each applicant shall be viewed singly, and shall be recognized as an individual;

~~(d)~~ (E) each applicant shall be allowed to discuss any specific problem areas with any member of the board.

(2) If the application is approved, the ~~warden--shall adopt--a--furlough--plan--for--the--prisoner,--which--shall constitute--an--extension--of--the--limits--of--confinement.~~ department shall: within the shortest possible time, locate an agency capable of supervising the applicant.

(3) ~~No--prisoner--shall--be--released--without--the--written consent--of--the--sheriff--of--the--county--receiving--the--prisoner.~~ The supervising agency, the department, and the applicant shall enter into a written agreement setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties. The agreement shall be executed, signed by the parties before a

notary public, in triplicate, with one copy to be filed with the supervising agency and the department and one copy to be retained by the applicant.

(4) Upon the signing of the agreement, the prisoner shall be released to the supervising agency.

(5) Final authority in all matters pertaining to prisoner furloughs is in the department.

(6) When an inmate is to reside in the county OR TRIBAL jail, the consent of the sheriff OR TRIBAL CHIEF OF POLICE in the receiving county OR RESERVATION is necessary. However, when the inmate is to reside in a community corrections center or some other supervised setting the sheriff OR TRIBAL CHIEF OF POLICE of the receiving county OR RESERVATION shall be notified.

(7) If the application is denied the prisoner may reapply after six (6) months' time. After an applicant has been denied three (3) times he may appeal to the department for a hearing."

Section 6. Section 95-2222, R.C.M. 1947, is amended to read as follows:

"95-2222. Disposition of prisoner's earnings — trust fund — schooling costs. (1) A prisoner employed in the community under a work furlough plan shall ~~surrender to the sheriff his total earnings less payroll deductions required by law. The sheriff shall deduct from such earnings in the~~

~~following order of priority enter into a written financial agreement with the supervising agency and the department concerning the acquisition and disposition of his earnings. This financial agreement shall provide for the payment of:~~

(a) ~~A standard charge for all prisoners determined by the county commissioners to be the cost to the county of providing food, lodging and clothing for each the prisoner if incurred and if applicable;~~

(b) ~~The actual and necessary travel and other expenses of each the prisoner under furlough from actual confinement under the program; and~~

(c) ~~Such an amount as the prisoner may be determined by the district judge to pay for the support of his dependents, which amount shall be paid to each the dependents; and~~

(d) ~~A minimal an allowance for personal items, and other expenses or disbursements agreed upon by the prisoner and the supervising agency.~~

(2) ~~Unless the financial agreement specifically provides for other disbursement of the money, any any balance remaining after each deductions and payments shall be deposited to an interest-bearing account held in trust for said the prisoner and shall be paid to him upon release.~~

(3) ~~If no other sources of support are available, the above the costs of a prisoner under furlough who is in~~

training or school shall be the responsibility of the state."

Section 7. Section 95-2223, R.C.M. 1947, is amended to read as follows:

"95-2223. Administrative rules — co-operation by state agencies. (1) The ~~warden department~~ is authorized to make rules for the administration of the provision of this act ~~with the advice and consent of the board in accordance with Title 82, chapter 42, R.C.M. 1947.~~

(2) All state, county and local agencies shall ~~BE ENCOURAGED TO~~ co-operate ~~with the warden and sheriff~~ in the administration of the furlough program."

Section 8. Section 95-2224, R.C.M. 1947, is amended to read as follows:

"95-2224. Prisoner not agent, employee or involuntary servant of ~~warden or sheriff~~. No prisoner employed in the community under the provisions of this act shall be deemed to be an agent, employee, or involuntary servant of the ~~warden or sheriff department or of the supervising agency~~ while released from confinement pursuant to the terms of the furlough program. ~~Abuse of this section shall be deemed official misconduct pursuant to 94-7-401, R.C.M. 1947.~~"

Section 9. There is a new R.C.M. section numbered 95-2226.1 that reads as follows:

95-2226.1. Responsibility of department and

supervising agency — CHANGE OR revocation of furlough — escape. (1) The department shall be responsible for the activities of a prisoner participating in a furlough program under this act. THE DEPARTMENT MAY DELEGATE JURISDICTIONAL SUPERVISION OF WORK FURLOUGH PARTICIPANTS TO THE ADULT PAROLE AND PROBATION FIELD SERVICE. The supervising agency shall be responsible for those activities of a furloughed prisoner for which it is responsible in the written furlough agreement.

(2) If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules and regulations of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency. If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance, ~~the department shall file an affidavit in the district court of the county in which the violation took place charging the prisoner with a violation of the rules and regulations of the furlough agreement. The district court~~ THE BOARD shall hold a hearing on the charge at which THE PRISONER SHALL BE GRANTED A HEARING ON THE VIOLATION WITHIN A REASONABLE TIME ON OR NEAR THE SITE OF THE ALLEGED VIOLATION TO DETERMINE WHETHER A VIOLATION OF THE FURLOUGH AGREEMENT EXISTS. ~~the~~ THE prisoner is entitled to have

~~counsel appointed to represent him. Upon determining that the prisoner has violated the rules and regulations of the furlough agreement, the court~~ BOARD shall order the prisoner returned to prison. AT THE HEARING. THE HEARING SHALL BE CONDUCTED BY A HEARING OFFICER OF THE BOARD OF PARDONS. THE PRISONER ON FURLOUGH SHALL HAVE ALL OPPORTUNITIES PROVIDED UNDER SECTION 95-3220, R.C.M. 1947, PERTAINING TO ON-SITE HEARINGS FOR PAROLE REVOCATION. IF REASONABLE GROUNDS ARE ESTABLISHED FOR VIOLATION OF THE FURLOUGH AGREEMENT, THE FURLOUGH SHALL BE CANCELLED AND THE PRISONER SHALL BE RETURNED TO THE PRISON. AT THE NEXT MEETING OF THE BOARD OF PARDONS AFTER THE RETURN OF THE PRISONER TO THE PRISON, THE PRISONER SHALL BE GRANTED A DUE PROCESS HEARING IN ORDER TO DETERMINE IF THE PRISONER HAS, IN FACT, VIOLATED THE TERMS OF THE PRISONER'S FURLOUGH RELEASE. IF IT IS DETERMINED THAT THE PRISONER HAS, IN FACT, VIOLATED THE TERMS OF THE PRISONER'S FURLOUGH, THE PRISONER SHALL REMAIN AT THE PRISON. IF THE TERMS OF THE PRISONER'S RELEASE HAVE NOT BEEN VIOLATED, THE PRISONER'S CASE SHALL BE ASSIGNED TO A PAROLE AGENT AND A NEW FURLOUGH ARRANGEMENT SHALL BE WORKED OUT.

(3) If the department determines AFTER HAVING BEEN ADVISED BY THE SUPERVISING AGENCY OR THE ADULT PAROLE AND PROBATION FIELD SERVICE, that a prisoner presents an immediate grave threat to the community in which he is

furloughed, it may order the prisoner returned to prison before a hearing is held, but in this case a hearing on the charges against the prisoner, as provided for in the above subsection, must be held ~~in the district court~~ BY THE BOARD no later than ~~ten (10)~~ THIRTY (30) days after the return of the prisoner to the state prison.

(4) IF, AFTER A REASONABLE TIME, A FURLOUGHED PRISONER DETERMINES THAT HIS FURLOUGH PLAN IS UNSATISFACTORY DUE TO PERSONALITY CONFLICT, A VIOLATION OF HIS RIGHTS BY HIS SUPERVISOR, OR A CHANGE OF INTEREST OR EMPLOYMENT STATUS, THE DEPARTMENT SHALL GRANT HIM A HEARING TO DETERMINE WHETHER OR NOT A NEW FURLOUGH PLAN SHOULD BE EXECUTED.

~~(4)~~ (5) If a prisoner, while not disabled from working by temporary illness, is unemployed for a period of thirty (30) days, or more, after his availability for employment is reported in writing by the supervising agency to the department of labor and industry office serving the area in which the prisoner is furloughed and to the ANY union to which the prisoner belongs, or if a prisoner has become so disabled as to be unemployable, or if a prisoner is on an educational furlough and has demonstrated for a period of six (6) weeks or more that he is unable to benefit from schooling, TREATMENT, or training, then the prisoner, the department, or the supervising agency may request that a conference be held with the department, the prisoner, and a

representative of the supervising agency to consider the problem of the prisoner's unemployment, disability, or inability to benefit from schooling or training. At this conference the prisoner may request that his supervision be transferred to another supervising agency, and a representative of the new agency may be at the conference. If the conference does not result in a resolution of the problem of the prisoner's unemployment, disability, or inability to benefit, the department may file ~~an affidavit in the district court of the county in which the prisoner is furloughed, stating that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program and requesting a hearing~~ REQUEST A HEARING BY THE BOARD OF PARDONS to determine an alternate proposal. In this hearing the prisoner is entitled to have counsel appointed to represent him. Upon determining that the prisoner is not benefiting from the furlough program and will not benefit from continued participation in the program, the ~~court~~ BOARD shall order the prisoner returned to the prison.

~~(5)~~ (6) For the purpose of this act, the provisions relating to escape in section 94-7-306, R.C.M. 1947, shall apply, unless aggravating circumstances require a more severe penalty.

~~Section 11. Section 82-4202, R.C.M. 1947, is amended~~

to read as follows:

~~§2-4202. Definitions. For purposes of this act:~~

~~(1) "Agency" means any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases, except that the provisions of this act shall not apply to the following:~~

~~(a) the legislature and any branch, committee or officer thereof;~~

~~(b) the judicial branches and any committee or officer thereof;~~

~~(c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof;~~

~~(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack;~~

~~(e) the state board of pardons, except that said board shall be subject to the requirements of section 3 [§2-4203] and 5 [§2-4205] of this act and its rules shall be published in the Montana administrative code and register;~~

~~(f) the supervision and administration of any penal, mental, medical or eleemosynary institution with regard to the admission, release, institutional supervision, custody, control, care or treatment of inmates, prisoners or~~

~~patients, except as provided in sections 95-2219 and 95-2223, R.C.M., 1947;~~

~~(g) the administration and management of educational institutions;~~

~~(h) the financing, construction and maintenance of public works.~~

~~(2) "Rule" means each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule, but does not include:~~

~~(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;~~

~~(b) declaratory rulings issued pursuant to section 10 [§2-4210] of this act;~~

~~(c) intra-agency memoranda;~~

~~(d) rules relating to the use of public works, facilities, streets and highways, when the substance of such rules is indicated to the public by means of signs or signals;~~

~~(e) seasonal rules adopted annually relating to hunting, fishing and trapping when there is a statutory requirement for the publication of such rules, and rules~~

~~adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;~~

~~(f) rules relating to personnel standards, job classifications or salary ranges for agency employees;~~

~~(g) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with section 10 [82-4210] of this act and shall be published in the Montana administrative code and register.~~

~~(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing and licensing.~~

~~(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or other form of permission required by law, but does not include a license required solely for revenue purposes.~~

~~(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license.~~

~~(6) "Party" means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be~~

~~construed to prevent an agency from admitting any person or agency as a party for limited purposes.~~

~~(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public organization of any character other than an agency."~~

~~SECTION 10. ALL RULES PROMULGATED UNDER THIS ACT SHALL COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT.~~

~~SECTION 11. SEVERABILITY. IF A PART OF THIS ACT IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.~~

~~Section 12. Section 95-2226, R.C.M. 1947, is repealed.~~

~~-End-~~